United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7254

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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THE STATE OF NEW YORK, Plaintiff-Appellant, v. DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTOUR, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, KIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name John being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE", "RICHARD ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE", "DONALD POE", "FRED MOE", "BOB BOE", "WARREN KOE", "BILL BOE", and "JOE WOE", true names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County, Defendants-Appellees.	:	Docket No. 75-7254

BRIEF FOR DEFENDANTS-APPELLEES

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QUESTION PRESENTED

Should the order of the District Court be affirmed for the reasons that:

a.) The Six Nations Confederacy is an indispensible party and cannot be sued without its consent under the doctrine of sovereign immunity.

b.) All the issues presented are political questions not within the power of the court to adjudicate.

STATEMENT OF THE CASE

This is a civil action filed by the State of New York, September 11, 1974, in the District Court for the Northern District of New York against forty-two named and unnamed individuals. (App. p. 1). The complaint alleges that the State is the owner of a certain parcel of land presently in the possession of the defendants. The complaint alleges that the defendants have claimed the right to possession of the lands as members of the Mohawk Nation, and that they issued the "Ganienkeh Mainfesto" asserting that the land belongs to the Mohawk Nation and Six Nations Confederacy. The complaint alleges that by reason of certain "treaties" the Mohawk Nation and the Six Nations ("Iroquois Confederation") have no title or right to the land. The complaint seeks a declaratory judgment denying the defendants' contention that the land is Six Nations territory, confirming the State's title, and restoring possession to the State.

By letter of November 24, 1974, the Grand Council of the Six

Nations, which is the governing body of the Confederacy, notified the District Court of the Six Nations' interest in this case.*/ (Supp. App. p.A1). The letter stated:

> To: The United States District Court for the Northern District of New York.
>
> The action of the State of New York v. Danny White, et al., (Ganienkeh), is in reality an action against the Mohawk Nation and the Six Nations Confederacy regarding the ownership of, or sovereignty over, the land of Ganienkeh. As such, it may not properly be decided by the courts of the United States, nor do the Mohawk Nation or the Six Nations Confederacy consent to be sued in United States courts.
>
> The question of the ownership of, or sovereignty over, the land of Ganienkeh can only be decided in an international forum or by diplomatic negotiations between the United States and the Six Nations.
>
> Therefore, the Six Nations Confederacy hereby formally objects to any assertion of jurisdiction by the United States District Court for the Northern District of New York over this matter.
>
> Signed: Chief Gordon Peters
> Secretary, Six Nations,
> Under the Direction of
> The Grand Council of the
> Six Nations Confederacy
> held on November 24, 1974.

The Grand Council authorized the defendants and their attorneys to move for dismissal of the complaint on the grounds raised by the Council's letter. The attorneys were expressly forbidden to raise any other matter before the court. See Affidavit of Robert T. Coulter (Supp. App. p. A2).

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*/ The letter and other documents contained in the Supplemental Appendix are contained in the record below but were inadvertently omitted from the Appendix.

Accordingly, defendants moved to dismiss. (App. p. 28). The State moved for summary judgement. (App. p. 92). The Town of Webb and the Big Moose Property Owners Association moved to intervene. (App. pp. 46, 60).

On March 27, 1975, the District Court dismissed the complaint, denied the State's motion for summary judgment and denied the motions to intervene. Memorandum-Decision and Order (App. p. 108). Judge Edmund Port found jurisdiction wanting, finding that the case did not arise under the Constitution, laws, or treaties of the United States, and citing particularly Taylor v. Anderson, 234 U.S. 74 (1914), and Oneida Indian Nation v. County of Oneida, 414 U.S. 661 (1974). The District Court expressly declined to pass upon or discuss the grounds for dismissal urged by defendants, nor did it consider the merits of the State's motion for summary judgement. Memorandum-Decision and Order. (App. pp. 108, 112).

--STATEMENT OF FACTS

In May of 1974 a group of Mohawk Indians moved into the Adirondack mountains to live permanently in their aboriginal homeland, called Ganienkeh, meaning "Land of the Flint." The Ganienkeh territory, encompassing some nine million acres, has always been the national territory of the Ganienkehaga or Mohawk Nation, a part of the Six Nations Confederacy. The

particular location where they settled had been purchased by the State in 1973 from a private corporation. The land was unoccupied.

The State, appellant herein, alleges that its claim of title can be traced back to a purported treaty made between the State of New York, on the one side, and Joseph Brant and John Deserontyou, claiming to be deputies of the Mohawk Nation. The treaty, executed in 1797, purported to relinquish all Mohawk lands to the State for the sum of $1,000.00 plus expenses.*/ Prior to the 1797 treaty, the land in question, as well as several million additional acres, was the undisputed territory of the Mohawk Nation and the Six Nations Confederacy. Their ownership of the land was recognized in the Treaty of 1784, the Treaty of Fort Stanwix, between the United States and the Six Nations Confederacy **/ of which the Mohawks were but one nation.

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*/ In 1798, New York State allegedly patented the lands in question to a non-Indian, private citizen, and the lands remained in private hands until New York repurchased them from the Nature Conservancy for the amount of $783,000 in 1973.

**/ The Confederacy was originally made up of the Onondaga, Seneca, Mohawk, Cayuga and Oneida Nations, and was later joined by the Tuscaroras after 1712. The Six Nations had and still have a central governing body known as the Grand Council in which all of the Six Nations participate and which makes all decisions by the principle of unanimity. The Grand Council, which performs the legislative, executive and judicial functions of government, continues today as the governing body of the Six Nations Confederacy.

The Six Nations Confederacy remains today a classic model of the federal state which is "...a perpetual union of several sovereign states which has organs of its own and is involved with

(footnote continued on following page)

The Six Nations Confederacy contends that the treaty of 1797 is invalid, not only because Joseph Brant had no authority under the Great Law of the Six Nations, Gayanerakowa, to dispose of Indian land,*/ but because the United States authorized and approved the making of the treaty, knowing that Brant had no such authority and that only the governing body of the Six Nations could enter into treaties regarding the land. See, Ganienkeh Manifesto, (App. p. 15).

The Indians who reside in Ganienkeh reclaimed that land not as individuals with a private claim, but rather as members of the Six Nations exercising their right to live on Six Nations' land (App. pp. 15-17). Similarly, the Grand Council, the governing body of the Six Nations, contends that the land in question is Six Nations land and therefore any dispute concerning the ownership of the land is with the Six Nations and not with individual Indians. See Letter of Six Nations to the Court (Supp. App. p.A1).

Nevertheless, appellants never sought to join the Six Nations as a party to this action. Nor did they avail themselves of the administrative remedies available through treaty procedures. See Article VII of Treaty of Canandaigua, 7 Stat. 44 (1794) (Supp. App. p. A8).

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power, not only over the member states, but also over their citizens. The union is based, first on an international treaty of the member-states, and secondly, on a subsequently accepted constitution of the federal state. A federal state is said to be a real state side by side with its member states, because its organs have a direct power over the citizens of those member states." Oppenheim, International Law, Vol. I, p. 175, (Lauterpracht, ed., 1958).

*/ Individuals could, however, cultivate unoccupied parcels of land and could sell or bequeath the improvements on or crops from the land. See Morgan, League of the Iroquois, 4-8, (1851, facsimile edition 1972). Since no one individual owned the land of the Six Nations, none could sell or otherwise dispose of the land. That could only be done by the Six Nations Confederacy.

SUMMARY OF ARGUMENT

This action is barred by the doctrine of sovereign immunity. This suit, although nominally against a number of individuals, is in substance a suit against the Mohawk Nation and Six Nations Confederacy. The action is characterized as a suit to remove a cloud on title. The cloud which the State seeks to remove is the claim of title to the land by the Mohawk Nation and Six Nations Confederacy.

The Confederacy is a sovereign state under international law, having treaty relations with other nations, and having the necessary elements of sovereignty, and therefore is immune from suit without its consent. The sovereign status of the Six Nations is recognized by the United States by treaty. All Indian nations including the Six Nations are immune from suit without their consent under the United States' domestic law, as well as international law. Thus the Six Nations, including the Mohawk Nation, having expressly objected to the jurisdiction of the District Court, may not be brought before the Court.

Because the Six Nations Confederacy is an indispensible party and cannot be joined, this action must be dismissed. The Six Nations Confederacy is a party which should be joined under Rule 19 (a), F.R.C.P., because, in its absense, complete relief cannot be accorded; it claims an interest relating to

the subject of the action; its ability to protect that interest would be impaired if the litigation proceeded in its absence; and an adverse ruling, in the absence of the Confederacy, would leave the defendants subject to "inconsistent obligations" by reason of the Six Nations' claim. Dismissal of this action will not leave the State without an adequate remedy.

Additionally, all the issues which must be determined in order to remove the cloud complained of are political questions and have been entrusted to the executive branch for determination. Therefore the federal courts cannot make an independent determination of the issues, but must adopt the position taken by the executive. Under these circumstances it would not only be a violation of the political question doctrine, but a mockery of the judicial process for the federal court to make a determination concerning the ownership of the disputed land.

The defendants will not address themselves to the issue of whether this is a case arising under the Constitution, laws and treaties of the United States. The defendants have directed counsel to argue only those matters presented herein. Therefore, no position is expressed as to the correctness of the reasoning of the court below or the arguments of the State on appeal. The Order of the court below was correct and ought to be affirmed for the reasons stated herein.

ARGUMENT

I. THIS ACTION IS BARRED BY THE DOCTRINE OF SOVEREIGN IMMUNITY.

A. This Action Is Actually And Substantially A Suit Against The Mohawk Nation And The Six Nations Confederacy.

The State seeks to remove the "cloud" on its title created by the Ganienkeh Manifesto and the occupation of the land by a group of Mohawk Indians, the defendants. The Ganienkeh Manifesto, which the State attached as an exhibit to its complaint, asserts that the land in question, as part of a much larger area, is owned by the Six Nations and the Mohawk Nation. The Manifesto states in part: "The fee simple is still vested in the Six Nations and the Mohawks have the aboriginal title to the ancient Ganienkeh." (App. pp. 15, 16.). The Manifesto states that it is the Mohawk Nation which is returning to its original territory, and states that the people will adhere to Gayanerakowa, the Great Law of the Six Nations Confederacy. (App. pp. 15, 16.).

The individuals living on the land have never claimed title to the land personally, but only the right to live on the land under the authority of the Mohawk Nation and Six Nations Confederacy. This is implied if not actually admitted in the allegations of the complaint. See paragraphs 12 and 13 and the prayer for relief. (App.pp. 5, 8.) The state's brief on this appeal shows even more clearly that it is the claim of the Mohawk Nation and Six Nations

that allegedly constitutes a cloud. The State's brief at p. 14 asserts that the removal of the individual defendants is only "incidental" to the declaratory relief removing the cloud. The State alleged in its complaint and argues on appeal that its title is dependent on treaties with the Mohawk Nation or Six Nations. The State argues on p. 17 of its brief:

> The Manifesto constitutes an attack on New York State's title, the validity of which is based upon federal treaties. The validity of these treaties is a federal question and should be decided by the federal courts. (See Oneida Nation v. County of Oneida, 414 U.S. 661 [1974]).

The relief sought by the State is a declaration that the land is owned by the State and not by the Mohawk Nation or Six Nations Confederacy. The gravamen of the complaint is against the Mohawk Nation and the Confederacy. The principle issue raised is the validity of an alleged treaty with the Mohawk Nation. The Six Nations Confederacy has notified the District Court, and the State likewise has notice, that the Six Nations Confederacy considers the suit to be "in reality an action against the Mohawk Nation and the Six Nations Confederacy." (App. p. 32.). What gives rise to the State's cause of action are not the bare statements of some individuals but the assertion of ownership and sovereignty by the Mohawk Nation and the Confederacy. Finally, the declaration sought by the State would, in a practical sense, prejudice, so far as the United States law is concerned, the claim of the Six Nations, for the "cloud" cannot be removed without extinguishing the claim of

the Indian nations.*/

Thus, the real parties in interest are the state and the Six Nations Confederacy. The state cannot practically have the relief it seeks unless the Mohawk Nation and the Six Nations are made defendants. Even if the court were to order the eviction of those particular defendants, that would not remove the cloud on title unless the court also decided that the Six Nations have no right to the land.

B. The Mohawk Nation And The Six Nations Confederacy Of Which It Is A Part, May Not Be Sued Without Their Consent.

The Six Nations Confederacy is a sovereign "state" within the meaning of international law, and has been recognized as such since prior to the founding of the United States.**/ As early as the 17th Century the Confederacy, at that time the Five Nations, concluded treaties with the British and other Europeans. See, III Documents Relative to the Colonial History of New York, 67-68, 321 et seq. (O'Callahan, ed., 1856). Even earlier, treaties had been concluded by the Dutch with related Indian nations. See, Ibid.,

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*/ Of course, the Six Nations could not be bound by the judgment in a res judicata sense without being made a party, nor would the judgment of the United States court be binding upon the Six Nations under international law.

**/ The status of foreign governments, including Indian nations, and the question of recognition of such governments, are political questions which may not be independently determined by the judiciary. See below pp. 25-32.

Vol. I at 593; Vol. XII at 48, 443. Treaties were also concluded between the French and the Five Nations. Ibid., Vol. III at 121-127. One of the most important treaties was concluded with the British at Fort Stanwix in 1768 demarking a line between the Six Nations territory and the areas of white settlement. Ibid., Vol. VIII at 135.

The Six Nations were unquestionably nations possessed of all the attributes of sovereignty. The Confederacy and the constituent nations were in complete governmental control of their own territory and people, made war and peace, carried on foreign relations, and enjoyed complete freedom in the conduct of their affairs. See generally, Lewis Henry Morgan, League of the Ho-De-No-Sau-Nee or Iroquois (1851).

The United States government also entered into treaties with the Six Nations. The treaties concluded between the United States and the Six Nations, unlike treaties concluded in later times with other Indian nations, reflect and recognize the fully sovereign character of the Six Nations. Amongst the subjects of the treaties between the United States and the Six Nations Confederacy which indicate the international status of the Confederacy were the making of war and peace, boundaries, and the exchange of prisoners. See, Office of the Solicitor, United States Department of the Interior, Handbook of Federal Indian Law, 39(1942) [Hereafter,

Fed. Indian Law]. See, Treaty of Fort Stanwix, 7 Stat. 15 (1784) and the Treaty of Canandaigua, 7 Stat. 44 (1794). Article VII of the latter treaty deals with the peaceful settlement of disputes, a subject which is typically the subject of treaties between or among nations. See, for example, Oppenheim, International Law, Vol. II, Amicable Settlement of State Differences, pp. 3-131. (Lauterpacht, ed., 1958).

The Six Nations were never conquered nor militarily subjugated by the United States. On the contrary, the treaties of 1784 and 1794 were sought by the United States in order to make peace with the Iroquois. A well-known work by the United States Department of the Interior gives the following account:

> 2. Importance to union of peace negotiations with Iroquois.
> The treaty of peace between the United States and the Iroquois was considered of considerable importance to the Central Government. Washington, in 1783, made a personal trip to the lands of the Iroquois to familiarize himself with conditions. The negotiations of peace in 1784 were closely followed by Washington in Virginia and Jefferson in Paris, and such personalities as James Madison, James Monroe, Lafayette, and General Butler were present as negotiotors or observers.
>
> The Iroquois insisted on acting in their collective capacity and, though they had been harried by Sullivan's expedition, any effort to expel the hostile tribes of the Iroquois from their ancient lands or any attempt to break up the League into its several tribes, would have been attended by a prolonged frontier war which the new Union was not

> prepared to prosecute. The controlling purpose of the Central Government was to make peace with the Iroquois and to drive a wedge between them and the western tribes - to separate the Iroquois from the sugjugated western tribes and to undermine the influence of the League over them.
>
> Fed. Indian Law, 418-419.

The judiciary of the United States as well as the executive branch has recognized the Indian as sovereigns. The Supreme Court in Worcester v. Georgia, 31 U.S. 515 (1832), referring specifically to the Cherokee Nation wrote:

> The Indian Nations had always been considered as distinct, independent political communities, retaining their original natural rights....[T]he settled doctrine of the law of Nations is that a weaker power does not surrender its independence - its right to self-government, by associating with a stronger and taking its protection. A weak state in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to be a state.
>
> 31 U.S. 559, 560-561.

It must be pointed out that the Cherokee Nation had concluded a treaty by which the United States was to "give peace to all the Cherokees, and receive them into the favour and protection of the United States," and the United States was to have "the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs, as they think proper." Treaty of Hopewell, 7 Stat. 18 (1785). If a nation does not surrender its independence by such a treaty, even less have the Six Nations given up their sovereignty, as they have never entered into treaties of such tenor.

The United States has continued to recognize its

treaty obligations to the Six Nations. As recently as November 22, 1974, the United States Commissioner of Indian Affairs addressed a formal complaint to the Grand Council of the Six Nations Confederacy under the Treaty of Canandaigua, 1794. (App. pp. 42-43). Not only with regard to treaty relations but also with regard to self-government, territorial integrity, and immunity from suit the Six Nations has retained the fundamental elements of sovereignty.

Under the doctrine of sovereign immunity, the State of New York may not bring the Six Nations before the District Court unless they agree to submit themselves to its jurisdiction. for,

> ...according to the rule par in parem non habet imperium - no State can claim jurisdiction over another. Therefore, although States can sue in foreign courts, they cannot as a rule be sued there unless they voluntarily submit to the jurisdiction of the court concerned. This rule applies not only to actions brought directly against foreign States, but also to indirect actions, as when, for instance, a suit in rem is brought against a vessel in the possession of a foreign State. */ Oppenheim, op. cit., Vol. I, pp. 264-266.

As the Permanent Court of International Justice stated in 1923,

> It is well established in international law that no state can, without its consent, be compelled to submit its disputes with other states either to mediation or to arbitration, or to any other kind

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*/ Or an indirect action as here, where an action is brought against citizens of the sovereign state in an attempt to evade the principles of sovereign immunity.

of pacific settlement.**/ Eastern Carelia, advisory opinion, series B, No. 5 at p. 27; quoted in Oppenheim, op. cit., Vol. II, p. 22.

American courts have also recognized the basic principle that the United States cannot bring an unwilling foreign nation before its courts:

> It is well as well established rule of international law that the public property of a foreign sovereign is immune from legal process without the consent of that sovereign. Loomis v. Rogers, 245 F.2d 941 (D.C. Cir., 1958), cert. denied, 69 S.Ct. 611.

Indeed, the Six Nations Confederacy has not agreed to submit itself to the jurisdiction of the federal courts in this matter. Rather, in the letter of November 24, 1974, it has invoked the principle of sovereign immunity and has objected to any assertion of jurisdiction by the district court.

The courts of the United States have often been compelled to dismiss actions regarding the property of a foreign sovereign when a claim of soveriegn immunity was interposed by the defendant. See, for example, Sullivan v. State of Sao Paolo, 122 F.2d 355 (2nd Cir., 1941).

Acts of Congress regarding the Indian nations do not alter their entitlement to sovereign immunity. Since sovereignty,

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**/ Judicial settlement is, of course, included within the concept of pacific settlement. See, Oppenheim, op. cit. Vol. II, pp. 42-87.

and therefore sovereign immunity, is a basic element of nationhood (Oppenheim, op. cit., Vol. I, p. 118), one nation cannot arbitrarily refuse the protections of sovereign immunity to another. This too has been recognized by the courts of the United States, as when the United States Court of Appeals for the Second Circuit noted in Sullivan v. State of Sao Paolo, supra, 122 F.2d at 359, "...the failure of our own government to maintain diplomatic relations with them" does not deprive states of their status as sovereigns. The New York Court of Appeals reached the same conclusion twenty years before, stating:

> Whether or not a government exists clothed with the power to enforce its authority within its own territory, obeyed by the people over whom it rules, capable of performing the duties and fulfilling the obligations of an independent power, able to enforce its claims by military force, is a fact not a theory. For it recognition does not create the state, although it may be desirable. Wulfsohn v. Russian Republic, 234 N.Y. 372, 375 (1923).

There are many attributes of sovereignty, only one of which is the principal that a sovereign and its heads of state are immune from suit without consent in the courts of another state of nation. Sovereignty means among other things that a state governs its citizens, controls its lands, controls who may enter its territory and exercises authority over those foreign nationals in its territory, regulates commerce, conducts

international relations with other nations including entering into treaties, and making war and peace.

It is an elementary principle that a state may lose, forfeit or abandon certain aspects of its sovereignty without being divested of other aspects. Thus, for example, under international law, even a nation under a protectorate status will retain for some purposes what has been termed an "international personality" whereby the government and the heads of state of the protectorate will enjoy the usual jurisdictional immunities in the courts of the protecting states and probably in those of other states too. Oppenheim, op. cit., Vol. I, §§92 & 93.

In this regard the Second Circuit has held:

> ...the doctrine [of sovereign immunity] is not confined to powers that are sovereign in the full sense of the juridical theory, but naturally is extended to those that, in actual administration, originate and change at their will the law of contract and property, from which persons within the jurisdiction derive their rights. Sullivan v. State of Sao Paolo, 122 F.2d 355 at 359 (2nd Cir., 1941).

Here the defendants derive their claim of right to live on, cultivate and improve the land in question from the claim of ownership by the Six Nations Confederacy which historically holds all Six Nations land in common. The Confederacy, including the Mohawk Nation, exercises the powers of self-government and enforces its law over those within its

jurisdiction, including the defendants. Thus, the Confederacy plainly has the powers referred to by the court in Sullivan.

Regardless of whether the United States has recognized the sovereignty of the Six Nations for all purposes, it has continued to respect certain aspects of Indian sovereignty. So, for example, United States law recognizes that income of an Indian nation or its citizens earned within its own territory may not be taxed by the state. McClanahan v. State Tax Commission of Arizona, 411 U.S. 164 (1973).

Most directly pertinent, United States law recognizes that Indian nations are immune from suit. Whether the United States government has the power to violate this aspect of sovereignty of Indian nations, and in particular the Six Nations, is not actually at issue here. For in fact, the immunity of Indian nations from suit has been recognized by United States courts. See, Turner v. United States, 248 U.S. 354 (1919); United States v. U.S. Fidelity Guaranty Co., 106 F.2d 804 (10th Cir., 1808). As the Eighth Circuit noted in Thebo v. Choctaw Tribe of Indians, 66 F. 372 (8th Cir., 1895), although the United States government did not recognize all aspects of Choctaw nationhood, it did recognize the nation's immunity from suit:

> It has been the policy of the United States to place and maintain the Choctaw Nation and the other civilized

> Indian Nations in the Indian Territory, so far as it relates to suits against them, on the plane of independent states. A state, without its consent, cannot be sued by an individual. 'It is a well established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts or any other without its consent and permission;...' [Quoting, Beers v. Arkansas, 61 U.S. 527 (1858)]. 66 F. 372, 374.

This principle applied by the federal court to the Choctaw Nation is equally applicable to the Six Nations Confederacy. Therefore, regardless of whether the political department of the United States government has sought to infringe upon many aspects of the sovereignty of Indian nations, it has not sought to violate this particular aspect of sovereignty. The right of the Six Nations to refuse to consent to be sued therefore remains unimpaired and having refused to consent, the Confederacy may not be brought before this Court.

C. The Six Nations Confederacy Is An Indispensable Party Which Cannot Be Joined And Therefore This Action Must Be Dismissed

The Six Nations Confederacy is an indispensable party to this action which cannot be joined.

Under Rule 19 a.) of the Federal Rules of Civil Procedure, a party should be joined in an action if:

> 1.) in his absence complete relief cannot be accorded among those already parties, or 2.) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. Rule 19 (a) F.R.C.P.

When a party who should be joined under the terms of Rule 19 (a) cannot be joined, the court must determine whether

> "...in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." Rule 19 (b), F.R.C.P.

As noted in Moore's Federal Practice, §19.05, p. 2209,

> "...The concept of indispensability goes beyond federal jurisdiction and touches the very power or the right of the court to make an equitable adjudication, where an indispensable party is not before it."

In determining whether the case should be dismissed the court must consider the following:

> "...first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder." Rule 19 (b), F.R.C.P.

Here, although the nominal parties defendant are individual Indians who are living on the disputed land, the real party in interest is the Six Nations Confederacy, through which the defendants claim their right to resettle the land, (see Ganienkeh Manifesto, App. 15 - 19) and which has sovereignty over the land (Supp. App. A1).

It should be remembered here that this is not a simple eviction action but rather an action to remove a "cloud" from the State's title to land. Despite the fact that appellant made no effort to join the Six Nations Confederacy as a party defendant, it too recognized that the "cloud" on its title to the land arose from the

claim of the Confederacy, and not merely by the resettlement by individual Indians. Even if the individual defendants were evicted from the land, the "cloud" would remain on appellant's title to the land since it is the Six Nations, not the individual defendants who claim ownership.

Thus it is clear that the Six Nations Confederacy is a party which should be joined pursuant to Rule 19 (a) since: 1) in its absence, complete relief cannot be accorded to the State, and 2) it claims an interest relating to the subject of the litigation and its ability to protect that interests would be impaired if the litigation proceeded in its absence, and 3) an adverse ruling in its absence would leave appellees subject to "inconsistent obligations" by reason of the Six Nations' claim. Because the persons living on the land are subject to the jurisdiction and law of the Six Nations, an inconsistent determination by this Court will subject them to conflicting demands.

As appellees have discussed above, however, under the doctrine of sovereign immunity the Six Nations Confederacy cannot be sued without its consent and the Confederacy has refused to give such consent, taking the

position that

> "The question of the ownership of or sovereignty over the Land of Ganienkeh can only be decided in an international forum or by diplomatic negotiations between the United States and the Six Nations." (Supp. App. A1).

Therefore the court below was obliged to determine whether the absent party must be regarded as indispensable and the action dismissed. Looking to each of the factors set forth in Rule 19 (b) it is plain that dismissal of the action is the only proper course.

First, a judgment concerning the ownership of the land which held in the State's favor would prejudice not only the Six Nations but the residents of Ganienkeh as well, leaving them subject to the conflicting claims of two different sovereignties. Secondly there is no apparent means for reducing the prejudicial effect of such conflicting claims. Third, as stated above, it is doubtful that adequate relief can be granted since the claim of ownership by the Six Nations is the real matter of controversy and cannot be determined in their absence. Fourth, dismissal of this action will not leave the State of New York without an adequate remedy. The proper course of action for New York State is to make an application or complaint to an appropriate office of the executive branch

of the federal government. Proper means for resolving this dispute are provided by treaties between the Six Nations and the United States, particularly Article VII of the Treaty of 1794 (7 Stat. 44) (Supp. App. p.A8). The State of New York has not yet attempted to pursue any available administrative remedies. Therefore dismissal of this action will not leave the palintiff without an adequate remedy.

The Six Nations Confederacy cannot be lawfully brought before a court of the United States without its consent. This is a fundamental principle of the law of nations as discussed above. Therefore, this Court has no alternative except to dismiss this action and remit the State to its proper remedies through the executive branch of the United States government.

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II. THE ISSUES BEFORE THE COURT ARE POLITICAL QUESTIONS WHICH MAY NOT BE PROPERLY DECIDED BY THE JUDICIARY

All of the issues which must be determined in order to remove the cloud complained of are inappropriate for decision by the District Court for the additional reason that they are "political questions," that is, questions the determination of which is committed to a coordinate branch of the government, and which the United States courts are therefore not free nor competent to decide, regardless of whether they arise under the treaties, laws or Constitution of the United States. Baker v. Carr, 369 U.S. 186 (1962).*/ The central question in this case is the validity of a federal treaty between New York State and a Mohawk Indian, Joseph Brant (The Treaty of 1797, 7 Stat 61). Appellants claim the Brant treaty was a valid treaty and that pursuant to it the Mohawk Nation relinquished all claim to Ganinekeh, the land in question herein. The Mohawk Nation and the Six Nations contend that Joseph Brant was not authorized to relinquish Six Nations land and thus the treaty is and always has been a nullity, and they are still the rightful owners of the land of Ganienkeh.

Another major question raised by this litigation is whether the Six Nations Confederacy is a sovereign state (or confederacy of states), and therefore whether it may claim sovereign immunity and refuse to consent to be sued.

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*/ According to Moore's Federal Practice §57.14, pp. 57-140, "It is well settled that constitutional courts, such as the district courts sitting within the various states, will not make a judicial determination of purely political questions."

In the case of Baker v. Carr, supra, 369 U.S. at 211-26, the Supreme Court carefully analyzed the political question doctrine listing the following issues as among those which have been committed to a coordinate branch of government and which are therefore not justiciable: the validity of treaties under international law and foreign constitutional law, the validity of federal statues under international law; the international boundaries of the United States; the status of Indian nations; the territorial sovereignty of foreign states; the existence of foreign insurgents, governments (de facto or de jure) and states; as well as a host of other issues.

Thus the validity of the treaty of 1797 by which the land was purportedly made part of the United States and the international status of the Six Nations and Mohawk Nation are "political questions" under United States law and therefore not capable of independent and impartial determination by the Courts.*/

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*/ Appellant raised other essentially political questions below, asserting that the Grand Council is not the traditional and continuing governing body of the Six Nations Confederacy. In fact, not only are appellees recognized by the Six Nations Confederacy, the Grand Council of the Six Nations has filed a complaint on their behalf concerning this lawsuit with the President of the United States pursuant to the Treaty of Canandaigua. See, complaint of Grand Council of Six Nations. (Supp. App. p.A4). In any case, the legal identity of appellees under American law, like the question of the sovereignty of their Nation, is a political question which this Court cannot independently determine but must defer to the determination of the executive branch of government.

A. The Validity of Indian Treaties

Indian treaties have been treated just as treaties with other foreign nations for the purpose of the political question doctrine, and therefore the federal courts have no competence or power to make an independent determination of their validity. The Office of the Solicitor of the Department of the Interior has written:

> Generally speaking the incidents attaching to a treaty with a foreign power have been held applicable to Indian Treaties. Thus, in accordance with the general rule applicable to foreign treaties, the courts will not go behind a treaty which has been ratified to inquire whether or not a treaty has been procured by duress or fraud, and declare it inoperative for that reason. [Citing United States v. New York Indians, 173 U.S. 464 (1898); United States v. Old Settlers, 148 U.S. 427, 466 (1893)] Federal Indian Law, supra p. 34.

The work goes on to quote the following language of the Supreme Court:

> . . . the treaty, after executed and ratified by the proper authorities of the government, becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation, than they can behind an act of Congress. Fellows v. Blacksmith, 60 U.S. 366, 372 (1856), quoted at Federal Indian Law, supra p. 34.

See also, Scharpf, Judicial Review and the Political Question: A Functional Analysis, 75 Yale L.J. 517, 545 (1966), for further discussion of the rule that the courts will not question the validity of a treaty which has been executed and ratified, and the applicability of that rule to treaties concluded with Indians.

B. Questions of International Boundaries and Sovereignty Over Land

Even if this case did not turn on the validity of a treaty, it

is clear that the issues of sovereignty over land and international boundaries are political questions which are inappropriate for decision by the United States courts. See, Wright, Federal Courts, p. 45-46 (1970).

The position of the United States courts is nowhere more clearly stated than by Chief Justice John Marshal:

> In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measure adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. Foster v. Neilson, 2 Pet. 253, 307 (1829).

A noted German legal scholar who has studied the "political question doctrine" in United States law has written the following:

> The reason which the Court gave in a territorial boundaries case for its reluctance to apply international law against the American government seems to have more general relevance:
>
> > A question of disputed boundary between two sovereign independent nations, is, indeed, much more properly a subject for diplomatic discussion, and of treaty, than of judicial investigation. [Citing De Le Croix v. Chamberlain, 25 U.S. 599, 600 (1827)].
>
> The international order has its own processes for the settlement of disputes between nations, and in these processes the American position must be defined, presented and defended by the political departments of the government.

* * *

> In such a situation, the international conflict could not be resolved before a domestic court, if only because the foreign party to the dispute is not subject to its jurisdiction. As the Court pointed out as early as 1796:
>
> > If we are to declare whether Great Britain or the United States have violated a treaty we ought to have some way of bringing the parties before us. [Citing Ware v. Hylton, 3 U.S. 199, 261 (1796)].
>
> If the ultimate determination of the international dispute must be left to the processes of settlement provided by the international order, then the Court's opinion would be provisional, rather than final, with respect to the international issue in dispute, and it might prejudice the American position for the formulation and presentation of which the political departments must assume full responsibility. As an unfailing support for the rightness of American claims (which might be tactically motivated and which might change) would jeopardize the integrity of the judicial process, the political question doctrine is a legitimate means for the Court to delimit its responsibility in international conflicts to which the United States is a party. (Footnotes omitted) Scharpf, Judicial Review and the Political Question: A Functional Analysis, 75 Yale L.J. 517, 575-6 (1967).

Thus it is clear, from the standpoint of international law and from the standpoint of the Six Nations that no fair and independent decision may be had in the United States courts, and it is therefore not appropriate for further proceedings to be entertained by the District Court. This does not mean the dispute regarding the land in question herein cannot be peacefully resolved. As Scharpf noted above, there are many established mechanisms for resolving land disputes between nations, such as negotiation, conciliation, arbitration, judicial settlement by international courts or a combination of the above. See, Oppenheim, op.cit., Vol. II, pp. 2-120. Only one method is precluded - decision by the courts of one of the two

disputing nations.

C. The Status of Indian Nations

As noted above, the status of all Indian nations has also been recognized by the Supreme Court to be a political question. Baker v. Carr, supra 369 U.S. at 215-6. In fact, that question has been considered beyond the power of the courts to independently determine since the earliest days of the United States. Chief Justice John Marshall wrote:

> They [the Cherokee Nation] have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.
>
> Cherokee Nation v. Georgia, 5 Pet. 1, 16 (1831)

Here then, all of the substantive questions before the Court are political questions and therefore there is nothing upon which a federal adjudication may be made. In this regard, Moore's Fed. Practice states:

> In summary, then, the original jurisdiction of the Supreme Court, or the original or removal jurisdiction of a federal district court is improperly invoked where the action involves nothing but political issues and the action should be dismissed if original jurisdiction is involved, and remanded to the state court if removal jurisdiction is involved. Moore's Fed. Practice, §57014 p. 57-143 [footnote omitted].

In contrast, where a political question is mixed with other issues, the court must adopt the decision of the appropriate branch with respect to the "political" issues but determine for itself the issues which are not political, and therefore justiciable.

> Thus, where justiciable and political issues are so intertwined that a decision on the justiciable issues demands a prior determination of the political issues, the judiciary is not itself to make the political determination. Moore's Fed. Practice, §57014,pp. 57-150.

The recent case of United States v. Consolidated Wounded Knee Cases, 389 F. Supp. 235 (W.D.S.D. & Neb., 1975) is just such a case of mixed political and non-political or justiciable issues. In those cases there was not only the question of the sovereignty of an Indian nation, but also independent questions of American criminal law. Judge Urbom explicitly recognized that he was not at liberty to make a legal determination as to the issue of sovereignty of the Sioux Nation. He acknowledged that he is bound by the decisions and course of conduct adopted by the executive branch and by Congress.

> Fourth, the people of the United States have not given me or any other judge the power to set national policy for them. By the Constitution the people have assigned governmental powers and have set their limits. Relations with Indian tribes are given exclusively to the executive and legislative branches. Perhaps it should be otherwise, but it is not. When and if the people amend the Constitution to put limits on the executive and legislative branches in their affairs with Indian tribes, the federal courts will uphold those limits, but in the meantime the courts cannot create limits. In short, a judge must hold government to the standards of the nation's conscience once declared, but he cannot create the conscience or declare the standards.

> The defendants, then, are addressing the wrong forum for gaining relief in their sovereignty grievances.*/ (footnotes omitted) United States v. Consolidated Wounded Knee Cases, supra, 389 F. Supp. at p. 239.

Thus the political question doctrine affirms the position taken by the Six Nations in the court below - that a dispute bewteen two nations concerning the ownership of land cannot be impartially decided in the courts of one of those two nations, since the courts must adopt the position of the executive. Rather it is a matter which must remain with the executive branch of the U.S. government and be resolved either through diplomatic negotionations with the Six Nations, or in an international forum. In any case, the Six Nations Confederacy has made it clear to the Court below that it cannot and will not be bound by an adverse ruling of a United States court concerning the sovereignty of the Six Nations over its aboriginal land.

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*/ There are numerous other cases in the body of U.S. law concerning the Indian nations dealing with both political and non-political questions, which appear at first glance to contain determinations of such questions as sovereignty. In fact, these decisions are merely recitations of the policy of the executive branch of government on the matters in question. See, for example, Johnson and Graham's Lessee v. McIntosh, 8 Wheat 523 (1823), Foster and Elam v. Neilson, supra (1829).

CONCLUSION

For the foregoing reasons the judgment of the Court below should be affirmed.

Respectfully submitted,

Nancy Stearns
c/o Center For Constitutional Rights
853 Broadway
New York, N.Y. 10003
(212) 674-3303

Robert T. Coulter
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Suite 200
Washington, D.C. 20005

Attorneys for Defendants-Appellees

Date: New York, New York
August 4, 1975

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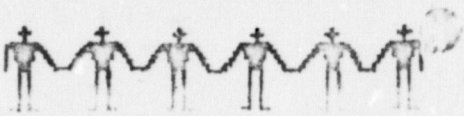

ONONDAGA COUNCIL OF CHIEFS
of the Iroquois Confederacy

P.O. Box 152 Nedrow, New York

THE SEAT OF THE SIX NATIONS — KEEPERS OF THE COUNCIL FIRE

November 24, 1974

TO: The United States District Court
for the Northern District of New York

The action of the State of New York v. Danny White, et. al., (Ganienkeh), is in reality an action against the Mohawk Nation and the Six Nations Confederacy regarding the ownership of, or sovereignty over, the land of Ganienkeh. As such, it may not properly be decided by the courts of the United States, nor do the Mohawk Nation or the Six Nations Confederacy consent to be sued in United States courts.

The question of the ownership of, or sovereignty over, the land of Ganienkeh can only be decided in an international forum or by diplomatic negotiations between the United States and the Six Nations.

Therefore, the Six Nations Confederacy hereby formally objects to any assertion of jurisdiction by the United States District Court for the Northern District of New York over this matter.

Sincerely,

Chief Gordon Peters

Chief Gordon Peters
Secretary - Six Nations

Under the direction of the Grand Council of the Six Nations Confederacy, held on November 24, 1974.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

v.

DANNY WHITE, et al.,

Defendants.

Civil Action File No.
74-CV-370

AFFIDAVIT

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

ROBERT T. COULTER, being duly sworn, deposes and says:

1. That he is and has been at all relevant times one of the attorneys for the people of Ganienkeh.

2. That the affiant has personal knowledge that the letter which was forwarded to the Court, signed by Gordon Peters, and dated November 24, 1974, was duly authorized at a meeting of the Grand Council of the Six Nations Confederacy at Onondaga, and reflects the unanimous position of the Council, which is the traditional governing body of the Six Nations Confederacy.

3. That the people of Ganienkeh have directed him and their other attorneys to take no action respecting the complaint in this matter other than to communicate to the Court the position of the Six Nations Confederacy and the adherance of the people of Ganienkeh to that position, and to argue the applicable law.

4. That he and the other attorneys have therefore been

directed to submit no evidence to this Court concerning the history and therefore the validity of the treaty in question in this matter.

5. That he knows of his own knowledge and upon information and belief that the evidence and history asserted by the plaintiff and amici are grossly incorrect, but that he is not authorized and therefore will not submit evidence to the contrary.

6. That the letter addressed to the Chiefs of the Six Nations, attached to defendants' memorandum in support of their Motion to Dismiss was, upon information and belief, official correspondence of the United States Department of Interior to the Grand Council of the Six Nations and was signed by Morris Thompson, Commissioner of Indian Affairs, and that the letter was delivered to the affiant at the Office of the Associate Solicitor for Indian Affairs of the Department of the Interior.

7. That the affiant personally delivered the said letter to Leon Shenandoah, Tadodaho, Firekeeper of the Six Nations at Onondaga, who in turn communicated the letter to the Six Nations Chiefs in Council.

Robert T. Coulter

Sworn to before me this
27th day of February, 1975

NANCY STEARNS
NOTARY PUBLIC, State of New York
No. 31-0819350
Qualified in New York County
Commission Expires March 30, 1976

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COMPLAINT

November 24, 1974

President Gerald Ford
White House
1600 Pennsylvania Ave.
Washington, D.C.

President Ford:

Pursuant to Article VII. of the Treaty of 1794, between the United States and the Six Nations Confederacy the following Complaint is hereby made by action of the Grand Council of the Six Nations.

The Complaint concerns injuries done to people of Ganienkeh at the Indian settlement located at Mogg Lake on the Big Moose Road about two miles north of Eagle Bay, New York.

1)On July 15, 1974 at about 5:00 p.m. a United States citizen fired shots at Ganienkeh. The .22 caliber shots were fired by the passenger of a jeep-like vehicle on the roadway a few yards from the main gate of the settlement, in the direction of Indian people and houses at Ganienkeh. The State Police were called and the person was consequently arrested and fined for possession of an illegal weapon.

2)In September, 1974 at the opening of the bear season, at about 7:00 p.m. a person believed to be a United States Citizen fired a high powered rifle into Ganienkeh from the Big Moose Road. The shot was fired from a blue pick-up truck with a plywood camper bearing a white stripe. The shot was fired from a position near the north gate to the Indian settlement.

3)On October 20, 1974 three men, United States Citizens, who were under the influence of alcohol, caused a disturbance at the main gate of Ganienkeh by using abusive language toward the people of Ganienkeh, blowing the horn of their vehicle and behaving in a threatening manner. The men then left the gate area but proceeded across the Big Moose Road to another area of Ganienkeh. The men refused to leave when ordered. Eventually the men left the area but the same vehicle returned one hour later. At this time, six shots were fired from the vehicle in rapid succession at the people of Ganienkeh who were on the East side of Big Moose Road and south of the main gate. The State Police know the identity of these assailants.

4)On October 26, 1974 at about 9:00 p.m. a person or persons believed to be United States citizens riding in a blue chevrolet

[illegible] shouted obscenities [illegible] riding in the direction of Big Moose. [illegible] at about one hour later and came to a [illegible] main gate to Ganienkeh. As the car [illegible] passed through the window of the car. Shots were fired from the car as it pulled away from the main gate.

5) On October 27, 1974 two young boys of [illegible] were fired upon by a person or persons believed to be United States citizens. The boys sought refuge behind a rock at the [illegible] Moss Lake and cried out, "Don't hurt, don't shoot." Their cries were answered by war whoops and a total of about [illegible] rounds were fired striking the ground near the boys. This incident was reported to the State Police.

6) On October 27, 1974, just after dark, a person or persons believed to be United States citizens riding in an automobile coming from the direction of Big Moose fired three shots at the main gate of Ganienkeh.

7) On October 28, 1974, at about 5:15 p.m., a white [illegible] driven by a person believed to be a United States citizen rapidly approached Ganienkeh from Eagle Bay. As the car neared the gate, its occupants shouted obscenities at Indians near the creek, then quickly drove toward the north gate of Ganienkeh. At this time one or more occupants of the car fired shots at an old Indian man chopping wood, after which the car continued in the direction of Big Moose. At about 6:00 p.m. the same vehicle returned, stopping near several Indians standing by the road. The driver gunned his engine and the car rapidly drove off as a shot or shots were heard from the car. The State Police and the Supervisor of the Town of Webb were immediately notified at [illegible] p.m., and no action was taken to prevent the subsequent attack.

8) On October 28, 1974, at about 8:30 p.m., a person believed to be a United States citizen riding in an automobile coming from the direction of Big Moose fired a small caliber weapon into Ganienkeh near the north gate. As the automobile approached the main gate to Ganienkeh it slowed down. Small caliber shots and a high powered shot were heard from the car as it passed the main gate. The State Police then arrived at [illegible] p.m.

9) On November 6, 1974, at about 9:00 a.m., two shots were fired by a person or persons believed to be United States citizens at Moss Lake in proximity to the dwelling house of [illegible].

On the same day at about 11:30 a.m., five shots were fired by a person or persons believed to be United States citizens in proximity to adults and children washing clothes at Moss Lake.

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10) The State of New York has threatened and attempted to exercise criminal jurisdiction with respect to the [illegible] (7) and (8) above. In particular, the New York police have attempted to investigate the wounding of two [illegible] citizens, April Madigan and Stephen Davis, by the Iroquois. The assertion of jurisdiction over these matters by the State of New York is in violation of Article VIII of the Treaty of 1794.

11) On September 9, 1974 the State of New York filed a civil action against the people of Canienkeh arising from the Canienkeh people's repossession of their ancestral territory. In their civil action, New York State is suing for repossession of what it calls "premises" of a former girl's camp, now under occupation by the people of Canienkeh. The Mohawk nation is determined to repossess as much of the Canienkeh Territory as possible. The Mohawk Nation has legal and aboriginal rights to approximately 10,000,000 acres of land in "New York State" and "Vermont". This means natural and moral rights to that much area. Again the State of New York seeks to impose its anti-treaty procedure through court action to resolve the dispute.

1) Also before the Grand Council is the Onondaga Nation's formal complaint that on October 4, 1974, New York State, represented by District Attorney John K. Holcombe, again violated the Treaty of Peace and Friendship and the said Article VII, by exercising the anti-treaty procedure of indicting into its courts the following Onondaga people on criminal charges of burglary, coercion, assault, etc., arising from the evictions of United States citizens who lived in trespass in the Onondaga Territory:

1. Mitchell Farmer
2. Horace Cook
3. Miron McClary, Head Warrior of the Onondaga Nation
4. Audrey Shenandoah, Faith Keeper
5. Alice Papineau, Bel Clan Mother
6. Leon Shenandoah, Ta-Da-Dah-Ho, Fire Keeper of the Grand Council, Six Nations Confederacy,

The right to evict is vested in the various national councils of the Six Nations Confederacy, not only by the Great Law - GAYANESHAKONA - but also according to agreements by Treaty between the United States and the Six Nations Confederacy.

All of the matters above Complained have endangered and thereby injured the people and residents of the Six Nations

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Confederacy and its territories contrary to the peace and friendship established by the Treaty of 1794.

In order that our peace and friendship shall continue unbroken the following measures are deemed prudent and necessary:

1) That the United States take immediate steps to ensure that all the above matters are fully investigated by the Federal Government;

2) With respect to the complaint of the United States Government of November 22, 1974, the legal machinery of the Grand Council has been set in motion as set forth in the letter to President Gerald Ford on November 24, 1974, by the Secretary of the Grand Council of the Six Nations;

3) That the United States take appropriate steps to ensure that further incidents do not occur;

4) That the United States immediately take steps to prevent the unwarranted assertion of jurisdiction by the State of New York in connection with the violence inflicted by United States citizens on the people of Ganienkeh, the Ganienkeh land dispute and the anti-treaty illegal indictments of prominent Onondaga citizens of the Six Nations Confederacy;

5) That the United States take whatever action may be necessary to terminate the action now pending in the Federal District Court for the Northern District of New York, New York vs. Danny White, et al., Civil Action No. 74-CV-370.

Signed:

Secretary
Under the direction of the
GRAND COUNCIL OF THE SIX
NATIONS CONFEDERACY, held
November 24, 1974

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A TREATY

Nov. 11, 1794.

Proclamation, Jan. 21, 1795.

Between the United States of America, and the Tribes of Indians called the Six Nations.

The President of the United States having determined to hold a conference with the Six Nations of Indians, for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the Sachems, Chiefs and Warriors of the Six Nations, in a general council: Now, in order to accomplish the good design of this conference, the parties have agreed on the following articles; which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations.

ARTICLE I.

Peace and friendship perpetual.

Peace and friendship are herely firmly established, and shall be perpetual, between the United States and the Six Nations.

ARTICLE II.

Certain lands secured to Indians.

The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New-York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE III.

Boundary of lands belonging to the Seneka nation.

The land of the Seneka nation is bounded as follows: Beginning on Lake Ontario, at the north-west corner of the land they sold to Oliver Phelps, the line runs westerly along the lake, as far as O-yong-wong-yeh Creek, at Johnson's Landing-place, about four miles eastward from the fort of Niagara, then southerly up that creek to its main fork, then straight to the main fork of Stedman's creek, which empties into the river Niagara, above fort Schlosser, and then onward, from that fork, continuing the same straight course, to that river; (this line, from the mouth of O-yong-wong-yeh Creek to the river Niagara, above fort Schlosser, being the eastern boundary of a strip of land, extending from the same line to Niagara river, which the Seneka nation ceded to the King of Great-Britain, at a treaty held about thirty years ago, with Sir William Johnson,) then the line runs along the river Niagara to Lake Erie; then along Lake Erie to the north-east corner of a triangular piece of land which the United States conveyed to the state of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that state; then due east to the south-west corner of the land sold by the Seneka nation to Oliver Phelps; and then north and northerly, along Phelps's line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneka nation: and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE IV.

Six Nations never to claim other lands in the U. S.

The United States having thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senekas, and engaged never to claim the same, nor to disturb them, or any of the Six Nations, or their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: Now, the Six Nations, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States; nor ever disturb the people of the United States in the free use and enjoyment thereof.

ARTICLE V.

Right to make and use a road granted.

The Seneka nation, all others of the Six Nations concurring, cede to the United States the right of making a waggon road from Fort Schlosser to Lake Erie, as far south as Buffaloe Creek; and the people of the United States shall have the free and undisturbed use of the road, for the purposes of travelling and transportation. And the Six Nations, and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbours and rivers adjoining and within their respective tracts of land;

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for the passing and securing of vessels and boats, and liberty to land their cargoes where necessary for their safety.

ARTICLE VI.

Present and annuity.

In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire, with humanity and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established, strong and perpetual; the United States now deliver to the Six Nations, and the Indians of the other nations residing among and united with them, a quantity of goods of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars, heretofore allowed them by an article ratified by the President, on the twenty-third day of April, 1792; making in the whole, four thousand five hundred dollars; which shall be expended yearly forever, in purchasing cloathing, domestic animals, implements of husbandry, and other utensils suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendant appointed by the President for the affairs of the Six Nations, and their Indian friends aforesaid.

ARTICLE VII.

Retaliation restrained.

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and Six Nations agree, that for injuries done by individuals on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other: By the Six Nations or any of them, to the President of the United States, or the Superintendant by him appointed: and by the Superintendant, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs: and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken; until the legislature (or great council) of the United States shall make other equitable provision for the purpose.

NOTE. It is clearly understood by the parties to this treaty, that the annuity stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations and of their Indian friends united with them as aforesaid, as do or shall reside within the boundaries of the United States: For the United States do not interfere with nations, tribes or families, of Indians elsewhere resident.

IN WITNESS whereof, the said Timothy Pickering, and the Sachems and War-chiefs of the said Six Nations, have hereto set their hands and seals.

Done at Kon-on-daigua, in the state of New York, the eleventh day of November, in the Year one thousand seven hundred and ninety-four.

TIMOTHY PICKERING.

O-no-ye-ah-nee,
Kon-ne-at-or-tee-ooh, or Handsome Lake.
To-kenh-yo-hau, alias Capt. Key.
O-nes-hau-ee,

Hendrick Aupaumut,
David Neesoonhuk,
Kanatsoyh, alias Nicholas Kusik,
[illegible],
[illegible],

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Ko-nooh-qung,
Tos-song-gau-lo-lus,
John Sken-en-do-a,
O-ne-at-or-lee-ooh,
Kus-sau-wa-tau,
E-yoo-ten-yoo-tau-ook,
Kohn-ye-au-gong, alias Jake Stroud.
Sha-gui-e-sa,
Teer-oos, alias Capt. Prantup.
Soos-ha-oo-wau,
Henry Young Brant,
Sonh-yoo-wau-na, or Big Sky.
O-na-ah-hah,
Hot-osh-a-henh,
Kau-kon-da-nai-ya,
Non-di-yau-ka,
Kos-sish-to-wau,
Oo-jau-geh-ta, or Fish Carrier.
To-he-ong-go,
Oot-a-guas-so,
Joo-non-dau-wa-onh,
Ki-yau-ha-onh,
Oo-tau-je-au-genh, or Broken Axe.
Tau-ho-on-dos, or Open the Way.
Twau-ke-wash-a,
Se-qui-dong-quee, alias Little Beard.
Kod-je-ote, or Half Town.
Ken-jau-au-gus, or Stinking Fish.
Soo-noh-quau-kau,
Twen-ni-ya-na,
Jish-kaa-ga, or Green Grass-hopper, alias Little Billy.
Tug-geh-shot-ta,
Teh-ong-ya-gau-na,
Teh-oug-yoo-wush,
Kon-ne-yoo-we-sot,
Ti-ooh-quot-ta-kau-na, or Woods on Fire.
Ta-oun-dau-deesh,
Ho-na-ya-wus, alias Farmer's Brother.
Sog-goo-ya-waut-hau, alias Red Jacket.
Kon-yoo-ti-a-yoo,
Sauh-ta-ka-ong-yees, (or Two Skies of a length.)
Oun-na-shatta-kau,
Ka-ung-ya-neh-quee,
Soo-a-yoo-wau,
Kau-je-a-ga-onh, or Heap of Dogs.
Soo-nooh-shoo-wau,
T-ha-oo-wau-ni-as,
Soo-nong-joo-wau,
Kiant-whau-ka, alias Cornplanter.
Kau-neh-shong-goo.

WITNESSES:—Israel Chapin, James Smedley, Augustus Porter, Wm. Ewing, Wm. Shephard, jun. John Wickham, James K. Garnsey, Israel Chapin, jun. Interpreters, Horatio Jones, Joseph Smith, Jasper Parish. Henry Abeele.

To the Indian names are subjoined a mark and seal.